

**BEVERLY HEALTHCARE AT FREDERICKSBURG, FREDERICKSBURG, VIRGINIA**

This Settlement Agreement is entered into this 1 day of April 2004 by and between the United States of America, including the United States Attorney for the Eastern District of Virginia (collectively "United States"); the Medicaid Fraud Control Unit ("MFCU") of the Office of the Attorney General and the Department of Medical Assistance Services ("DMAS") on behalf of the Commonwealth of Virginia (collectively "the Commonwealth of Virginia"); and Beverly Enterprises, Inc., owner and operator of Beverly Healthcare at Fredericksburg, Fredericksburg, Virginia ("Fredericksburg"), to resolve the potential civil claims more fully described herein. The above sovereigns and entities are referred to herein as "the Parties."

**PREAMBLE**

A. WHEREAS, Fredericksburg, located at 3900 Plank Road, Fredericksburg, Virginia 22407, is a long-term care/skilled nursing facility engaged in the provision of health care services to Medicare/Medicaid beneficiaries; and

B. WHEREAS, the United States Attorney's Office for the Eastern District of Virginia, and the Commonwealth of Virginia (collectively referred to as "the Governments") conducted an investigation arising under the federal civil False Claims Act, 31 U.S.C. §§ 3729-3733 and Virginia's civil Medicaid Fraud statutes pursuant to Virginia Code Annotated § 32.1-312 and § 32.1-313; and contend that during the period 1995 to present ("the Covered Period"), Fredericksburg from time to time failed to provide adequate nursing services in a timely manner in view of the current clinical condition of the residents, and by actions or omissions subjected residents to conditions posing unreasonable risks to their health and well being; and

C. WHEREAS, the Governments allege that the above conduct resulted in damages to the Medicare and Medicaid health care programs, in that the Governments contend that the care provided was not in compliance with all existing regulations and standards; and

D. WHEREAS, Fredericksburg in entering into this Settlement Agreement does not admit that the care provided was inadequate, and further denies any wrongdoing, inadequacy or liability in regard to the care rendered to any resident of Fredericksburg; and

E. WHEREAS, Fredericksburg has cooperated with the Governments during the course of their investigations; and

F. WHEREAS, Fredericksburg has, on its own initiative and prior to the initiation of any investigation by the governments, taken certain executive actions designed to ensure that its staff provides adequate care to all residents at all times and to improve the quality of life for both residents and staff at the facility, including hiring of new management, engaging additional professional staff, working to employ permanent staff to the extent that the facility does not need to rely upon temporary agency nursing personnel, and implementing professionally recognized policies and procedures designed to deliver appropriate nursing care to all residents; and

G. WHEREAS, Fredericksburg, as part of the Beverly Healthcare system, entered into a Corporate Integrity Agreement ("CIA") with the Office of the Inspector General, Department of Health and Human Services ("OIG") on February 3, 2000, as amended, and pursuant to the CIA has taken significant steps to improve quality assurance monitoring within the facility and through the assistance and oversight of an Independent Review Organization ("IRO"); and

H. WHEREAS, the Parties wish to resolve this matter in an amicable manner without the need for protracted and expensive litigation; and

I. WHEREAS, the Parties agree that this Settlement Agreement is entered into solely as a compromise to avoid litigation of a disputed claim and that Fredericksburg denies and does not

admit any violation of any federal or state law or regulation, or any other breach or wrongdoing of any nature whatsoever, and that this Settlement Agreement, as well as the financial payments made pursuant to this agreement, are not and shall not be construed as evidence of any fact, a conclusion as to any issue of law, an admission, a statement against interest, or waiver as to any issue of law or fact regarding any issue alleged or implied by this Settlement Agreement, including but not limited to culpability, liability, inadequacy, wrongdoing, or the violation of any federal, state or local statute or regulation;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the Parties, intending to be legally bound, enter into the following Settlement Agreement.

#### REQUIREMENTS OF SETTLEMENT AGREEMENT

1. Fredericksburg has already invested over \$190,000 in extraordinary capital improvements at the facility to improve the quality of life for the residents and staff. Further, Fredericksburg has previously been assessed and has paid \$17,420 to the federal government in civil penalties for the alleged conduct that is set forth in Paragraph B. The Parties agree that in addition to these amounts already invested and paid, Fredericksburg will devote an additional \$315,000 toward settling all matters relating to the federal and state governments' allegations pursuant to this Settlement Agreement.

2. The Parties acknowledge that Fredericksburg has already invested and will continue to invest a significant amount of money and managerial efforts in the continued operation of the facility to ensure that care is provided in accordance with the applicable federal and state standards. Fredericksburg has implemented these changes pursuant its own initiative and in accordance with the CIA with the intent of improving the facility and providing quality care to and for the benefit of all of its residents, the majority of whom are Medicaid beneficiaries.

Fredericksburg has made significant capital improvements during the Covered Period, created new full-time employee positions, and has taken steps to reorganize and change contracts with medical providers in an effort to provide a more fully integrated health care team to serve the residents at the facility as follows:

a. The facility has obtained a new medical director, a new podiatrist, and a new psychiatric team. In addition, the facility has contracted for the services of a nurse practitioner, designated two unit managers, and has created and filled new positions of staffing coordinator and a staff development coordinator.

b. Fredericksburg expended significant capital for improvements that favorably impact the quality of life for both the residents and the staff. Extraordinary capital expenditures from 2000 to the present total approximately \$190,000, and include:

1. Purchase of new heating and cooling units, and overhaul of cooling system, \$25,084;
2. Purchase of new beds and mattresses, including some high-end therapeutic mattresses, \$59,421;
3. Purchase of 24 new dining room tables, \$12,342;
4. Purchase and installation of new walk-in freezer unit, \$6,973;
5. Upgrade of septic system, \$17,200;
6. Purchase of generator, to ensure lights, heating, and cooling in the event of a power outage, \$50,000; and
7. Purchase of "Watchmate" system to warn of potential resident elopement, \$18,291.

3. In addition to the significant investments already made in personnel and capital improvements, and pursuant to and as part of this Settlement Agreement, the Parties further

agree that Fredericksburg will create and fund five (5) new "Settlement Caregiver positions" as set forth in Paragraph 5 below, for a total estimated investment in the Settlement Caregiver positions during the term of the Settlement Agreement of \$140,000.<sup>1</sup>

4. In addition to the capital investments that have already been contributed, the Civil Monetary Penalties previously paid, and the estimated \$140,000 to be spent for the Settlement Caregiver positions, Fredericksburg will pay the total additional cash sum of \$175,000 to or at the direction of the United States and the Commonwealth of Virginia in settlement of all matters relating to any allegations that Fredericksburg provided substandard care at any time during the Covered Years, including Civil Monetary Penalties assessed and paid; allegations arising under the federal civil False Claims Act, 31 U.S.C. §§ 3729-3733; and, Virginia's civil Medicaid Fraud statutes at § 32.1-312 and § 32.1-313 of the Code of Virginia. The \$175,000 shall be paid as follows:

a. A check in the amount of \$25,000 shall be tendered to the Commonwealth of Virginia, Medicaid Fraud Control Unit, with the designated payee: Virginia Attorney General's Office, Medicaid Fraud Control Unit within ten days of the Effective Date of this Settlement Agreement; and

b. Fredericksburg agrees to establish a separate account for the maintenance of a cash reserve in the amount of \$150,000 in accordance with instructions provided by the Department of Justice, ("DOJ") (hereinafter, the "Implementation Account"), the proceeds of which shall be used expressly for Fredericksburg's expenses associated with the remedial measures identified in this Settlement Agreement, including quality of care improvements, approved equipment expenditures and other compliance requirements set forth in this Settlement Agreement.

<sup>1</sup> Conservatively, this is calculated as two Licensed Practical Nurses at a cost of \$40,000 per annum each; three Certified Nursing Assistants at a cost of \$20,000 per annum each.

The Parties agree that the funds will be placed in the Implementation Account no later than 10 (ten) days after the Effective Date of this agreement. The Parties agree that the account may be maintained by Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., Washington, D.C., which shall act as the disbursing agent for these funds.

#### STAFFING, TRAINING AND OTHER REMEDIAL MEASURES

5. Pursuant to the provisions of Paragraph 3 of this Settlement Agreement and to fulfill other requirements of this agreement, Fredericksburg has created and filled the Settlement Caregiver positions provided for herein and will take the following steps, as specified.

a. Fredericksburg has hired three (3) additional full-time certified nursing assistants to assist with the personal hygiene and other care needs of residents; to assist residents eating in dining rooms; and to more fully implement the facility's restorative treatment program. In addition, Fredericksburg has hired two (2) additional licensed nurses who shall be designated as unit managers and shall assist in rendering care, overseeing the certified nursing assistants, and coordinating the residents' plans of care.

b. Fredericksburg shall evaluate the overall adequacy of its staff every six (6) months during the pendency of this Settlement Agreement and adjust staffing levels, as appropriate, to meet the needs of residents identified in their comprehensive care plans. All staff shall be deployed throughout the facility in a manner designed to ensure that the individual needs of the residents are met.

6. In addition to the payments described in paragraphs 1-4, Fredericksburg agrees to ensure that a Beverly corporate consultant selected at its discretion will spend at least two days per month at Fredericksburg for the first six months of the pendency of this Settlement Agreement, and one day per month thereafter, for the purpose of ensuring timely implementation of the requirements of this Settlement Agreement. The Parties agree that this consultant will be

available to give timely advice to facility administrators and staff with respect to measures designed to prevent falls, development and recurrence of pressure sores, timely identification of changes in medical conditions requiring intervention, adequate nutrition and provision of reasonable personal hygiene measures. The facility shall maintain documentation to verify these consultations. The Corporate Consultant shall submit to the Governments and Fredericksburg a semi-annual report on the assessment and implementation of the quality of care provisions noted in paragraphs 8 through 15 below.

In addition, Fredericksburg agrees to retain an additional gerontological consultant who is not presently employed by Beverly Healthcare, unless the appointment of a person presently employed or working for Beverly as an independent contractor is approved in advance by the DOJ. This consultant will review the adequacy of the health care delivery system at Fredericksburg and make written recommendations to the corporate consultant and management officials at Fredericksburg as to the manner in which Fredericksburg might improve care of its residents. Such consultant shall tour Fredericksburg within thirty (30) days of the date of this Settlement Agreement and make any recommendations that he or she may have within fifteen (15) days thereafter. Such consultant (or his/her replacement) shall tour Fredericksburg on the anniversary of this Settlement Agreement and repeat the tasks specified herein.

7. Fredericksburg agrees to provide the Governments with quarterly status reports of amounts expended by the facility from the Implementation Account to implement the requirements of this Settlement Agreement, with the first such status report being due 15 days following the close of the first full month following the date of this agreement and shall continue thereafter until all such requirements have been fully implemented. Fredericksburg's Executive Director shall certify the accuracy of the amounts expended as listed on the status reports. Fredericksburg shall provide such supporting documentation as is required by the Governments

upon request. Furthermore, the corporate consultant specified in paragraph 6 above may make recommendations for further expenditures for specific items and activities beyond those explicitly set forth in this agreement, which shall be considered in good faith by Fredericksburg. Fredericksburg will seek approval from the DOJ before expending any amounts from the Implementation Account pursuant to the consultant's recommendation and other than as expressly approved in this Settlement Agreement.

### QUALITY OF CARE

8. Fredericksburg will provide each resident with adequate skin care, nutrition, turning and positioning and other services to decrease the likelihood of skin breakdown and the development of pressure sores. To the extent not already completed by appropriate Fredericksburg professionals, Fredericksburg will within 120 days of this Settlement Agreement: conduct a medical assessment of its patients to determine which patients are at risk for the development of decubitus ulcers; institute a comprehensive decubitus ulcer prevention program; and implement this prevention program on those residents assessed to be at risk for the development of decubitus ulcers.

9. Fredericksburg will maintain a nutritional program for residents that continues to fully meet their nutritional needs. To that end, Fredericksburg shall:

a. Continue to ensure that there are appropriate levels of staff supervision at each dining room table during meals;

b. Obtain the weight of each resident on a monthly basis and/or as ordered by a physician or recommended by a member of the Fredericksburg Interdisciplinary team in addition to ensuring that a corrective plan of treatment approved by the Interdisciplinary team or the residents' physician is instituted for those residents who exhibit a significant weight loss and ensuring that the residents' responsible party is notified of a significant weight loss;



c. By no later than the end of the first quarter following the effective date of this Settlement Agreement, take steps to procure insulated food carts to ensure food is served at appropriate temperatures, for which Fredericksburg is expressly authorized to use monies from the Implementation Fund; and

d. By no later than the end of the first quarter following the effective date of this Settlement Agreement, Fredericksburg shall evaluate the need for additional renovations to the facility's kitchen and prepare a project plan setting forth recommended improvements, including the estimated costs and implementation dates for which Fredericksburg is expressly authorized to use monies from the Implementation Fund.

e. By no later than the end of the first quarter following the effective date of this Settlement Agreement, Fredericksburg will provide inservice training to all direct care staff on how to effectively encourage residents to eat/drink, how to accurately complete ADL sheets and on how to properly capture the percentage of the meal consumed by each resident.

10. Fredericksburg will implement and/or maintain a program for falls that will ensure the proper assessment of residents' needs in their care plans and will take reasonable steps to prevent falls. To this end, Fredericksburg shall:

a. Continue the present program to upgrade beds and mattresses as may be appropriate for the well-being of the residents and the ease of the staff, with the intention of completing the procurement of no fewer than twenty new beds within six months following the effective date of this Settlement Agreement for which Fredericksburg is expressly authorized to use monies from the Implementation Fund;

b. Within the first six months of this Settlement Agreement, Fredericksburg shall procure additional mats to be placed at resident bedsides, as appropriate, to mitigate the impact

of unavoidable falls by residents. Fredericksburg is expressly authorized to use monies from the Implementation Fund for this purpose; and

c. Procure and utilize chair alarms and other assistive devices, as necessary, for which Fredericksburg is expressly authorized to use monies from the Implementation Fund.

d. Assess residents for falls/injury risks on admission to the facility, quarterly in conjunction with updates to the residents' Minimum Data Set and Plan of Care, and within seven (7) days in the event of a resident fall, as well as develop plans to prevent falls/injuries based on the fall/risk assessment; and

e. Maintain written records to monitor falls of residents and any medical interventions following changes in the medical condition of residents to ensure timely and effective steps are taken to prevent falls and address changes in medical conditions; and

f. To the extent not already completed, provide in service training to direct care staff on how to prevent falls/injuries within six (6) months of this Settlement Agreement.

11. Fredericksburg will continue to take those steps necessary to ensure that patients are monitored sufficiently to determine changes in medical condition warranting medical intervention, including timely ordering of laboratory tests, analysis of test results and physician notification and responsible party of such changes, as necessary.

12. Fredericksburg agrees to continue to implement professionally based orientation, in-service, and other training programs for staff. All staff shall attend mandatory in-service training as is appropriate for their discipline and level of job responsibility. Fredericksburg will at all times maintain a comprehensive long term training program to ensure that staff members are knowledgeable and competent to perform all assigned tasks.

13. By no later than the end of the first quarter following the effective date of this Settlement Agreement, Fredericksburg shall evaluate the need for repairs, upgrades, or other

improvements to the current air conditioning system, and shall prepare a project plan setting forth recommended improvements, including the estimated costs and implementation dates, with the intent of ensuring that all patient areas are effectively air conditioned during periods of hot weather, for which Fredericksburg is expressly authorized to use monies from the Implementation Fund.

14. Fredericksburg agrees to continue to comply with the applicable laws, rules and regulations governing the Medicare and Medicaid programs, including the Nursing Home Reform Act of 1987, as amended and codified at 42 U.S.C. §§ 1395, et seq. and 1396, et seq.; 42 C.F.R. Parts 483, 488.

15. Fredericksburg further agrees to continue to implement its Corporate Compliance Plan dated February 3, 2000, as amended.

#### RECORDS

16. Fredericksburg will continue to enforce policies requiring that all professional standards relating to the proper means of entering and, where necessary, changing, information in a medical record be strictly adhered to. Fredericksburg shall train its staff that falsification or improper alteration of any resident record and other document related to resident care is forbidden. Fredericksburg shall obtain from each employee a signed statement indicating that the employee understands the policy forbidding any falsification or improper alteration and the appropriate manner in which to make entries into medical records and, should a change be necessary, the acceptable means of documenting the changes and the reasons therefor. Fredericksburg further agrees that it will terminate the employment of any person found to have willfully or through deliberate ignorance or reckless disregard caused a falsification or improper alteration of any record maintained at Fredericksburg.

## EVALUATION PROVISIONS

17. Fredericksburg agrees to engage an independent third party Evaluator who shall be a Registered Nurse (or have equal or better qualifications) with substantial experience in the care of elderly persons residing in a nursing home setting to evaluate Fredericksburg's compliance with the terms of this Settlement Agreement. The Evaluator will tour Fredericksburg on a date and time to be agreed upon by the Parties, but no later than eighteen (18) months from the date of this Settlement Agreement. The purpose of this monitoring/evaluation tour of Fredericksburg by this Evaluator shall be to determine Fredericksburg's compliance with the provisions of this Settlement Agreement prior to its termination.

18. The United States and Fredericksburg shall mutually agree upon the Evaluator. If the Parties are unable to agree on the appointment of an Evaluator, the United States may nominate the Evaluator and petition the United States District Court for the Eastern District of Virginia or any other court of competent jurisdiction for the appointment of its nominee. The parties recognize that there is presently a mutually agreed upon independent Evaluator appointed in connection with the CIA, and the parties are not precluded from agreeing to use this Evaluator for the task defined in paragraph 17.

19. If the Evaluator resigns prior to the conduct of the monitoring/evaluation tour contemplated by this Settlement Agreement or is removed for any reason by mutual agreement of the Parties prior to the completion of his/her term of appointment, the United States and Fredericksburg shall mutually agree upon the appointment of a successor Evaluator. If the Parties are unable to agree on the appointment of a successor Evaluator, the United States may nominate the Evaluator and petition the United States District Court for the Eastern District of Virginia or other court of competent jurisdiction for the appointment of its nominee.

20. During the monitoring/evaluation tour, the Evaluator shall have access to all current nursing home residents, their medical records, records in the possession or control of Fredericksburg (e.g., staffing records and quality assurance reviews) and Fredericksburg staff and employees, for purposes of ensuring coordination of responses to identified problems and enabling the Evaluator to fulfill his/her duties. The Parties acknowledge that Fredericksburg's progress and improvements in meeting its own quality of care standards are routinely evaluated internally, and are subject to various privileges that protect the critical self-evaluation process from disclosure to potential litigants, which privileges shall not be considered to have been in any respects waived by virtue of the Evaluator's access. Fredericksburg shall ensure the Evaluator's immediate access to facilities, individuals, and documents, and assist in obtaining the full cooperation of its current employees, contractors, and agents.

21. At the completion of the monitoring/evaluation tour, the Evaluator shall provide an exit interview to appropriate officials of Fredericksburg and prepare a written report detailing findings, including, as appropriate, recommended steps and procedures that, in the Evaluator's view, may be implemented to facilitate full compliance with this Settlement Agreement.

22. The Evaluator shall deliver the report to the Parties to this Settlement Agreement by delivering a copy to the following named persons (or their designees) via electronic mail or facsimile, and USPS regular mail, or such other method of delivery agreed upon by the Parties

Arthur E. Peabody, Jr.  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Virginia  
2100 Jamieson Avenue  
Alexandria, VA 22314  
Fax: (703) 299-3983

John Mitchell  
Executive Director  
Beverly Healthcare Fredericksburg

3900 Plank Road  
Fredericksburg, VA 22407-6839

Marie C. Infante, Esq.  
Carolyn J. McElroy, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, D.C. 20004  
Fax: (202) 434-7400

23. Upon receipt of the report, Fredericksburg shall have the opportunity to submit a response regarding any concerns raised by the Evaluator and provide any further information to clarify or contest the Evaluator's conclusions and explain subsequent actions taken by Fredericksburg in response to these concerns. Fredericksburg's response, if any, shall be submitted within twenty (20) business days of receipt by Fredericksburg of the Evaluator's report, via electronic mail or facsimile, and USPS regular mail, as directed by the Governments. Fredericksburg and the United States agree that, at the request of Fredericksburg or the Governments, the Parties shall meet in person or via teleconference promptly to discuss any issues or concerns raised by the Evaluator or to otherwise facilitate compliance. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Agreement shall prevent the United States from calling the Evaluator as a witness in any proceeding brought to enforce this Settlement Agreement.

24. If, after review of the report and any comments provided by Fredericksburg, the United States determines that Fredericksburg has achieved compliance with this Settlement Agreement, monitoring activities shall terminate and Fredericksburg shall have no further legal obligations pursuant to this Settlement Agreement. If the United States believes that compliance has not been achieved, the United States shall promptly notify Fredericksburg of the reasons for its belief, and shall consider in good faith any rebuttal information and argument provided by the

facility. If, after considering any rebuttal information and argument, the United States still believes that compliance has not been achieved, the United States may demand that a further monitoring/evaluation tour be scheduled no later than six (6) months following the completion of the initial tour. Fredericksburg may file a proceeding in Court seeking the termination of the Evaluator and/or this Settlement Agreement, but Fredericksburg shall bear the burden of establishing that they have fully and faithfully implemented each and every provision of this Settlement Agreement. The Parties agree that the United States District Court for the Eastern District of Virginia is the appropriate forum for any such action.

#### AUDITS, COMPLIANCE, REPORTS AND ENFORCEMENT

25. If Fredericksburg fails to comply with the terms of this Settlement Agreement, or if any of Fredericksburg's representations or warranties are willfully and materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- a. Seek specific performance of this Settlement Agreement, in which case the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs; or
- b. Exercise any other right granted by law, including seeking to hold Fredericksburg in civil contempt.

26. If the United States exercises any of its rights under paragraph 25 of this Settlement Agreement, Fredericksburg specifically reserves all of its right to challenge, defend and contest any such action.

27. The obligations imposed by this Settlement Agreement on Fredericksburg shall be in effect for a period of eighteen (18) months from the date of this Settlement Agreement provided that the facility continues to be owned and operated by Beverly Enterprises, Inc. While it is not presently contemplated that the facility would be sold, in the event that a sale to an unrelated third party occurs before the termination of this Settlement Agreement, the Parties agree that

Beverly's obligation to remit the amounts due to the Governments, fund the Implementation Account, and the obligations imposed upon the facility pursuant to the expenditure of the Implementation Account shall be transferred to and imposed upon any successor in interest. The parties recognize that all other obligations imposed upon Beverly pursuant to this Agreement including, without limitation, the obligations to evaluate and report facility conditions, reporting requirements pursuant to the Beverly CIA and the obligation to ensure that a Beverly consultant is on site in the facility, are unique to Beverly and, with the exception of reporting expenditures from the Implementation Account, shall not be imposed upon a successor in interest.

28. In the first report on the expenditures from the Implementation Account that comes due following the first anniversary of this Settlement Agreement, Fredericksburg agrees to provide an expanded quarterly report to the United States Attorney, Eastern District of Virginia, that includes not only information on the Implementation Account, but also reports on and verifies the status of its compliance with this Agreement. This report shall include a description of the steps that Fredericksburg has taken to implement this Agreement; the barriers or impediments encountered that have precluded full and timely implementation of this Agreement, if any; the specific steps and/or procedures that have been adopted to overcome any barriers and ensure full implementation of the Agreement; a description of the training programs implemented pursuant to this Agreement; and certification by an appropriate official of Fredericksburg that all covered persons have completed the required training. Fredericksburg shall provide assurances that the information provided in this expanded quarterly report is correct.

#### RELEASES

29. In consideration of the promises made by Fredericksburg in this Settlement Agreement and conditioned upon payment in full of the settlement amounts referred to in



paragraphs 1 through 4, the United States and the Commonwealth of Virginia, on behalf of the sovereigns and their officers, agents, agencies, and departments, hereby release and discharge Fredericksburg, its parents, affiliates, and current officers, directors and employees from any and all civil or administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States and the Commonwealth of Virginia may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, Virginia's civil Medicaid Fraud statutes §§ 31.1-312 and 313 of the Code of Virginia, and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Fredericksburg from January 1, 1995 to the effective date of this Settlement Agreement and (b) the adequacy of care (as described in paragraph B to the Preamble above) provided to all residents of the nursing home from January 1, 1995 to the present.

30. The Parties agree that the releases given in the preceding paragraph specifically exclude the following:

a. Any civil or administrative disputes, adjustments, CMS or DMAS enforcement actions or claims relating to matters other than those for (1) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Fredericksburg during the Covered Period, and (2) the adequacy of care provided during the Covered Period to all residents of the nursing home;

b. Any civil, criminal or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code;

c. Any disputes or claims arising under any express or implied warranties relating to product or services;

d. Any disputes or claims arising under the criminal laws of the United States or the Commonwealth of Virginia;

e. Except as explicitly stated otherwise in this Settlement Agreement, any administrative liability, including mandatory or permissive exclusion from federal health care programs;

f. Subject to the enforcement provisions of paragraphs 25 and 26, any obligations created by this Settlement Agreement; and

g. Any civil money penalty or termination action by CMS or DMAS, if any such action is based on matters other than deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Fredericksburg during the Covered Period and the adequacy of care (as described in Paragraph B, above) provided during the Covered Period.

31. Fredericksburg agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. § 1395 et seq., and §§ 1396 et seq. (and the regulations promulgated thereunder) incurred by or on behalf of Fredericksburg with regard to: (a) the governments' investigations, and Fredericksburg's investigation and defense of the matter covered by this Settlement Agreement; (b) the negotiation of this Settlement Agreement; (c) the civil monetary penalties previously paid to the United States; and (d) the payment to the Commonwealth of Virginia pursuant to paragraph 4 of this Settlement Agreement; and (e) any corrective actions taken pursuant to this Agreement that are not related to providing resident care (including but not limited to the costs associated with hiring the Evaluator and legal and accounting costs

associated with filing required reports and certifications) shall be unallowable costs for government contract accounting and for Medicare, Medicaid, VA and the Federal Employees' Health Benefit Program ("FEHBP") reimbursement purposes. Unallowable costs shall not include: the cost of additional in-service professional and compliance training for the staff, the costs related to additional personnel, including consultants, hired or retained for the purpose of improving resident care, capital improvements and other expenditures related to this Agreement to the extent the costs do not result in the Provider exceeding the Medicaid Prospective Operating Ceiling or Capital Reimbursement Limits. Unallowable costs shall be separately estimated and accounted for by Fredericksburg. Fredericksburg will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by Fredericksburg to TRICARE, VA or FEHBP programs. Nothing in this Settlement Agreement shall constitute a waiver of the rights of Fredericksburg, or any Medicare fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or re-examine the unallowable costs described in this paragraph.

32. In consideration for such repose and on the terms and conditions contained herein, Fredericksburg fully and finally releases, dismisses, and forever discharges the United States and the Commonwealth of Virginia, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by CMS or the OIG, and damages, including attorneys' fees, costs and expenses, which Fredericksburg could have asserted against the United States, its agencies, employees, servants and agents before the effective date of this Settlement Agreement for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Fredericksburg from January 1, 1995 to the present and (b) the adequacy of care provided from January 1, 1995 to the

present on behalf of the nursing home residents. This paragraph shall not be interpreted to prevent Fredericksburg from pursuing amounts due to Fredericksburg as a result of the Medicare or Medicaid cost reporting and reimbursement processes.

#### OTHER PROVISIONS

33. This Settlement Agreement constitutes the complete agreement between the Parties and may not be amended except by the written consent of the Parties.

34. The undersigned individuals signing this Settlement Agreement on behalf of Fredericksburg represent and warrant that they are authorized by Fredericksburg to execute this Settlement Agreement. The undersigned United States and Commonwealth of Virginia signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement and to bind their respective sovereigns to the terms and conditions herein.

35. Each party to this Settlement Agreement will bear its own legal and other costs incurred in connection with this matter.

36. This Settlement Agreement is legally binding and judicially enforceable by the Parties and it shall be applicable to and binding upon all of the Parties, their officers, agents, employees, assigns, and successors, including any transferees of Fredericksburg except as provided in Paragraph 27.

37. The effective date of this Settlement Agreement will be the date on which this Agreement is executed by a representative of Fredericksburg.

For the United States of America:


Arthur E. Peabody, Jr.  
Arthur E. Peabody, Jr.  
Assistant U.S. Attorney

Date: 3/9/04

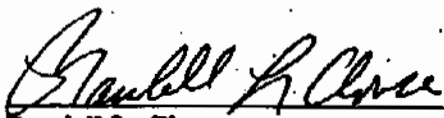
Constance H. Frogale  
Constance H. Frogale  
Assistant U.S. Attorney

Date: 3/9/04

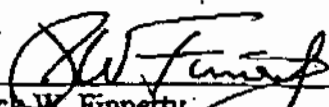
For the Commonwealth of Virginia:

  
Tracey D. Stith  
Assistant Attorney General  
Medicaid Fraud Control Unit

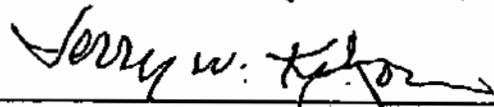
Date: 3/25/04

  
Randall L. Clouse  
Director, Commonwealth of Virginia  
Medicaid Fraud Control Unit


Date: 3/30/04

  
Patrick W. Finnerty  
Director, Commonwealth of Virginia  
Department of Medical Assistance

Date: 3/23/04


  
The Honorable Jerry W. Kilgore  
Attorney General  
Commonwealth of Virginia

Date: 4/5/04

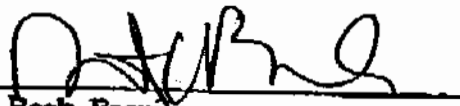
  
The Honorable Mark R. Warner  
Governor  
Commonwealth of Virginia

Date: 4/9/04

For Beverly Healthcare at Fredericksburg:

  
Marie C. Infante, Esquire  
Counsel for Beverly Healthcare Fredericksburg

Date: April 5, 2004

  
David Beck, Esquire  
General Counsel, Healthcare  
Beverly Healthcare Fredericksburg

Date: April 1, 2004